

SMARSH WEBSITE & HOSTING REPRESENTATIVE TERMS & CONDITIONS

This Webhosting & Services Terms and Conditions (“Terms”) are effective as of the date of execution of the Order Form, as defined in Section 1, and entered into by the representative specified on the Order Form (“Representative”) and FV Acquisition Corp., a Nevada corporation located at 851 SW 6th Ave., Ste. 800, Portland, OR 97204, a wholly owned subsidiary of Smarsh, Inc. (“Smarsh”). The Order Form incorporates these Terms, and binds the Representative and Representative’s company.

In consideration of the mutual promises contained herein, Representative and Smarsh agree as follows:

1. SERVICES.

The following services are collectively the “Services” that may be provided to Representative upon Smarsh’s acceptance of an executed order form (“Order Form”):

- 1.1. **Development.** Smarsh will develop the websites purchased by Representatives according to the website package specified on the Order Form (“Website”).
- 1.2. **Hosting.** Smarsh will host the Website on servers for the Term, as that term is defined in Section 4.1, such that the Website is publically viewable and accessible to third parties via the World Wide Web.
- 1.3. **Domain Name Registration; Transfers.** If purchased, Smarsh will register the domain names indicated by Representative; provided that such domain name is available and eligible for registration. Representative acknowledges that, whether or not a particular domain name is available for registration is not indicative of Representative’s legal right to register and use such domain name and Smarsh will not be responsible or liable for any claim made by any third party arising from the registration of any such domain name. In the event Representative’s chosen domain name is not available, Representative may purchase domain name transfer Services from Smarsh. In the event Representative purchases domain name transfer Services, Smarsh will use commercially reasonable efforts to transfer the applicable domain name to the Representative. Representative is responsible for any domain transfer fees, payments or settlements that may be incurred by Smarsh in order to transfer such domain; provided that, no such fees shall be incurred without the applicable party’s prior written consent.
- 1.4. **Search Engine Optimization.** If purchased, Smarsh will provide search engine optimization services to Representative according to the package specified on the Order Form (“SEO Services”).
- 1.5. **Support.** Representatives may engage Smarsh support by contacting 1–888-379-5724 or email support@smarshsites.com.

2. REPRESENTATIVE OBLIGATIONS

Representative is responsible for providing Smarsh with all necessary content to provide the Services within ten (10) business days from executing an Order Form (“Representative Content”). Representative Content includes but is not limited to audio and video clips, graphics, logos, trademarks, service marks, business names and other text or content to be included within a Website or for the provision of SEO Services, in the format requested by Smarsh.

3. FEES & PAYMENT TERMS

The Order Form sets forth the fees for Services (“Fees”) and the related payment schedule. Fees will be invoiced according to the payment terms specified in the Order Form. All invoices are due thirty (30) days from the date of invoice. The Fees offered under this Agreement will not increase for the initial one-year term of the Order Form. Thereafter Fees may be increased upon at least thirty (30) days prior notice to Representative. Smarsh reserves the right to suspend Representative access to the Services in the event any Fees are not paid when due. A late fee of 1.5% per month may be assessed on all outstanding Fees.

4. TERM & TERMINATION.

4.1 The Order Form is effective as of the date Representative executes the Order Form (“Effective Date”) and will continue in full force and effect for the period set forth in the Order Form (“Initial Term”). Unless Representative provides Smarsh with at least 90 days written notice of its intent to terminate the Order Form prior to the expiration of the Initial Term or any Renewal Term, the term will automatically renew for successive terms, which will equal the length of the Initial Term (“Renewal Term”), unless otherwise agreed to in the Order Form. Collectively, the Initial Term and the Renewal are the “Term”.

4.2 Either Representative or Smarsh may terminate an Order Form in the event of a material breach of its terms by the other party, by providing the breaching party with thirty (30) days prior written notice (such notice specifying in sufficient detail the nature of the breach), and provided that the breaching party does not cure such breach within the thirty (30) day notice period.

4.3 Upon termination of an Order Form by Smarsh, Representative shall pay any Fees owing for the remainder of the then current Term. Upon termination of an Order Form for any reason, Smarsh will discontinue the Services purchased under the Order Form.

5. CONFIDENTIALITY.

5.1. **Confidential Information.** “Confidential Information” means (a) non-public business or technical information of either party, including but not limited to information relating to a party’s product plans, customers, designs, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how; (b) any information designated by a party as “confidential” or “proprietary” or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; (c) the terms and conditions of this Agreement. “Confidential Information” does not include information that: (a) is in or enters the public domain without breach of this Agreement; (b) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (c) the receiving party knew prior to receiving such information from the disclosing party; or (d) the receiving party develops independently without reference to the Confidential Information. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the disclosing party, if feasible and legally permitted to do so, gives reasonable notice to the other party to contest such order or requirement; and (ii) to the party’s agents, auditors, representatives, subcontractors or service providers who have a need to know such information and only upon the requirement that such party maintain the Confidential Information on a confidential basis.

5.2. **Confidentiality Obligations.** Each party agrees: (a) that it will not disclose to any third party, or use any Confidential Information disclosed to it by the other party, except as required to perform an obligation hereunder or as expressly permitted in this Agreement; and (b) that it will take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance.

5.3. **Remedies.** Each party acknowledges and agrees that a breach of any of the obligations of this Section 5 by the other party will result in irreparable injury to the disclosing party for which there will be no adequate remedy at law, and the disclosing party shall be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by recipient.

6. THIRD PARTY SERVICES.

Certain Services offered by Smarsh may be dependent on or incorporate third party software, applications, platforms (such as third party social media or business networking platforms), messaging, communication or search engine optimization services, API’s, or third party data capture tools, or third party provided content or information (“Third Party Services”). These Third Party Services are not controlled or provided by Smarsh. In some cases the Third Party Service may make changes to its service, or components thereof, or discontinue a service without notice to Smarsh. Accordingly, Smarsh does not represent or warrant that the Third Party Services will be accurate, complete or error free. Smarsh expressly disclaims any liability related to, or arising from Third Party Services, including Representative’s use thereof, or any updates, modifications, outages, delivery failures, corruptions, discontinuance of services or termination of Representatives account by the Third Party Service. Smarsh is not responsible or liable for how the Third Party Service accesses, processes, stores, transmits, uses or provides data to Representative. Representative is solely responsible for complying with any Third Party Services terms and conditions.

7. COMPLIANCE.

Representative is solely responsible for the information disseminated on a Website and shall comply with all laws, rules or regulations which apply to Representative's business, including those related to the content of information provided to the public. Smarsh is not responsible for, and expressly disclaims any liability for, any information or content provided on any Website, including the truth, accuracy, veracity and/or content of the information found on the Website.

8. INTELLECTUAL PROPERTY.

8.1. As between Representative and Smarsh, Smarsh owns all right, title and interest in and to the templates, graphics, fonts, images or other content, APIs, applications or widgets made available by Smarsh to Representative as part of the Services (excluding Third Party Services), and all source code, object code, know how, methodologies, technology, applications that make up or are related to the Services (excluding Third Party Services) ("Smarsh Property"). Nothing in this Agreement shall be construed as granting to Representative any ownership right in or to the Smarsh Property and Smarsh shall remain the sole and exclusive owner of the Smarsh Property. The Services shall not be considered a "work made for hire".

8.2. Representative owns all right, title and interest in and to the Representative Content provided to Smarsh for inclusion within a Website and for the provision of SEO Services, and in and to Representative's logos, trademarks and service marks. Upon full payment of any domain registration or domain transfer fees specified in an Order Form, Representative shall own all right, title and interest in and to such domain. Upon execution of an Order Form, Representative grants Smarsh the right to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display and otherwise use Representative Content in order to provide the Services.

8.3. In the event Representative purchases custom development Services, the parties shall execute a statement of work related to such Services which shall specify the ownership rights in such custom development work.

9. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS.

9.1. Each party to this Agreement represents and warrants that it has sufficient right, title, and/or interest in, and to, all intellectual property, (a) in the case of Smarsh, required to perform the Services, as specified in the Order Form, and (b) in the case of Representative, provided to Smarsh.

9.2. Upon executing an Order Form, or providing Representative Content, Representative represents and warrants that Representative is the owner of the Representative Content, or has obtained all necessary rights and licenses in the Representative Content to include the Representative Content on a Website.

9.3. Representative represents and warrants that, to the extent Representative receives any personally identifiable information or information which is otherwise protected under data protection statutes, directives, rules or regulations, Representative shall fully comply with all data protection statutes, directives, rules or regulations. Representative shall be solely responsible for ensuring that Representative obtains the necessary consents for the collection of any personally identifiable information.

9.4. Representative represents and warrants that it will in all respects comply with applicable laws and regulations.

9.5. Smarsh represents and warrants that the Services shall be performed in a diligent, prompt and professional manner by personnel with the knowledge, skills, expertise and training to provide the Services.

9.6. OTHER THAN AS EXPRESSLY STATED IN SECTION 9.1 and 9.5, SMARSH MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE WEBSITE OR OTHER SERVICES, INCLUDING WITHOUT LIMITATION, ANY INFORMATION OR MATERIALS PROVIDED, OR MADE AVAILABLE, BY SMARSH. SMARSH CANNOT CONTROL THIRD PARTY SEARCH ENGINES AND MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE RESULT OF ANY SEO SERVICES. SMARSH HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, SMARSH DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE AVAILABLE OR ERROR FREE. SMARSH SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE

INTERNET, ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF SMARSH.

10. LIMITATION OF LIABILITY.

10.1. IN NO EVENT WILL SMARSH BE LIABLE FOR: (a) ANY LOST PROFITS; (b) COST OF PROCURING SUBSTITUTE GOODS, SERVICES, TECHNOLOGY, OR RIGHTS; OR (c) ANY FORM OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND (WHETHER OR NOT FORESEEABLE), EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ARISING OUT OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

10.2. SMARSH'S TOTAL AGGREGATE LIABILITY HEREUNDER FOR ALL DAMAGES ARISING UNDER OR RELATING TO THE ORDER FORM OR THE PROVISION OF SERVICES, NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO THE TOTAL AMOUNT OF REGULAR MONTHLY FEES ACTUALLY RECEIVED BY SMARSH FROM THE REPRESENTATIVE FOR THE NON-CONFORMING SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE MONTH IN WHICH THE INCIDENT CAUSING THE DAMAGES AROSE.

10.3. THE LIMITATION ON LIABILITY SET FORTH ABOVE IS CUMULATIVE; ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES SHALL BE AGGREGATED, TO DETERMINE IF THE LIMIT HAS BEEN REACHED. THE ABOVE LIMITATIONS OF LIABILITY REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES IN VIEW OF THE FAVORABLE FEES BEING CHARGED BY SMARSH RELATIVE TO THE SERVICES DESCRIBED HEREIN, AND ARE MATERIAL TERMS HEREOF.

10.4. Smarsh shall not be liable to Representative for any damages arising out of an interruption in Service due to Representative's failure to pay any Fees when due.

11. INDEMNIFICATION.

Representative shall indemnify, defend and hold harmless Smarsh, its officers, directors, employees and agents, from and against all direct and third-party claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees), arising from the Representative's breach of Sections 1,2,5,8 or 9 or otherwise arising out of Representative's use of the Services.

12. GENERAL TERMS.

12.1. **Severability.** If for any reason a court of competent jurisdiction finds any provision or portion of the Order Form to be unenforceable, that provision of the Order Form will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the Order Form will continue in full force and effect.

12.2. **Force Majeure.** The performance of either party under an Order Form may be suspended to the extent and for the period of time that such party is prevented or delayed from fulfilling its obligations due to causes beyond its reasonable control (including, without limitation, acts of God, acts of civil or military authority including governmental priorities, strikes or other labor disturbances, fires, floods, epidemics, wars, or riots). After thirty (30) cumulative days of suspension on the part of one party, the other party may, at its sole discretion, terminate its obligations without further notice or liability.

12.3. **Notices.** All notices under the Order Form shall be in writing, properly addressed and shall be deemed to have been duly given or received upon the earlier of: (i) when actually received, (ii) five business days after sending by registered or certified mail, return receipt requested, or (iii) one business day after sending via next business day delivery service, and such service obtains the signature of a representative of the recipient. Any notices not addressed as follows shall be deemed not to be received. Notices shall be provided to: Smarsh, Inc., Attn: Legal Department 921 SW Washington Street, Suite 540, Portland, Oregon 97205. Notices to Representative shall be provided to the address specified on the Order Form.

12.4. **Authority.** Each party hereto represents and warrants that it has full power and authority to enter into the Order Form, and to fulfill its obligations hereunder.

12.5 **Choice of Law; Venue.** The Order Form will be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict/choice of law principles. Any legal action or proceeding arising under the Order

Form will be brought exclusively in the federal or state courts located in Multnomah County, State of Oregon, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

12.6. **Relationship.** The parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other.

12.7. **Entire Agreement.** The Order Form represents the entire agreement of Smarsh and the Representative and any prior agreements, promises, negotiations, or representations, whether oral or written, not expressly set forth in the Order Form are of no force or effect.

12.8. **Amendment.** The Order Form may be modified only in writing, any such modification being signed by both parties.